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**FILED**

August 14, 2007

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

MARK H. FLEISCHER, M.D.  
License No. 25MA03954600

TO PRACTICE MEDICINE AND SURGERY  
IN THE STATE OF NEW JERSEY

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: Administrative Action  
:  
: FINAL ORDER  
: OF DISCIPLINE  
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This matter was opened to the New Jersey State Board of  
Medical Examiners ("Board") upon receipt of information which the  
Board has reviewed and on which the following findings of fact and  
conclusions of law are made;

**FINDINGS OF FACT**

1. Respondent, Mark H. Fleischer, M.D., is the holder of License No. 25MA03954600, and was licensed to practice medicine and surgery in the State of New Jersey from 1981 until 1997 after which time Respondent permitted that license to lapse.

2. On or about April 5, 2004, the New York State Department of Health, State Board of Professional Medical Conduct (the "New York Board") filed a Statement of Charges against Respondent alleging professional misconduct under New York Education Law

**CERTIFIED TRUE COPY**

Section 6530(3) by reasons of having practiced the profession with negligence on more than one occasion with regard to patients A, B, C, and D. Respondent was also charged with professional misconduct under New York Education Law Section 6530(32) by reason of failing to maintain a record for each patient which accurately reflects the evaluation and treatment of patients A, B, C, and D. On or about April 21, 2004, the New York Board issued a Consent Order adopting the terms of the Consent Agreement executed by Respondent. The New York Board suspended Respondent for a period of 60 months, the duration of said suspension was stayed and is to be served on probation. Pursuant to the Consent Agreement and Order, Respondent pled no contest to the First and Second Specification set forth in the Statement of Charges in full satisfaction of the charges against him.

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2. On October 20, 2004, the New Jersey State Board of Medical Examiners ("the Board") entered an Order of Summary Suspension suspending Respondent's license by operation of N.J.S.A. 45:1-7.1, without a hearing. The Order provided that in the event Respondent sought reinstatement of his New Jersey license in the future, he would be required to show cause why the application for reinstatement should not be refused or issued subject to such restraints, as the Board may deem appropriate, because of the New York licensure action.

3. On or about December 1, 2005, Respondent, via his attorney, petitioned the Board for reinstatement of his New Jersey license. In his submission for reinstatement, Respondent informed the Board that on or about July 1, 2004, he was sentenced in the U.S. District Court, Western District of New York, to a term of imprisonment of twelve months following a plea of guilty on November 19, 2003, to a one-count misdemeanor information charging him with a violation of Title 18 U.S. Code §1003 (demands against the United States) for submitting insurance claims for non-rendered medical services. The plea of guilty was entered pursuant to the terms of a written plea agreement executed by respondent. Respondent was also sentenced to pay a \$3,000 fine, a \$237,000 restitution, and 1 year term of supervised release under the condition that he comply with the U.S. attorney's office in the repayment of a civil judgment to Blue Cross/Blue shield and Medicare in the amount of \$237,000.

4. Respondent appealed the court's decision and on or about February 3, 2005, the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit affirmed the lower court's judgement in part and vacated the judgement ordering \$237,000 in restitution and remanded with directions to enter restitution in the amount of \$12,500.

5. On or about May 19, 2005, an Amended Judgement was entered committing respondent to 12 months of incarceration followed by 1 year supervised release. The supervised release

provisions included compliance the New York Board order dated April 24, 2004.

6. On July, 1, 2004, during Respondent's sentencing, the Honorable Michael A. Telesca, United States District Judge, stated that the pre-sentence report indicated that Respondent was caught sniffing nitrous oxide at St. Mary's Hospital when respondent was there as an anesthesiologist. According to the transcript, Respondent voluntarily relinquished his privileges at the hospital in order to avoid further inquiry. The Judge further stated that the same pre-sentencing report revealed that Respondent cited a substance abuse problem to bolster his psychiatric disability claim with First Allmerica Financial Life Insurance Company for which he won a \$250,000 claim in 1996.

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#### **CONCLUSIONS OF LAW**

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1. The above disciplinary action taken by the sister state of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(d), in that, Respondent has engaged in repeated acts of negligence, malpractice or incompetence.

2. The above disciplinary action taken by the sister state of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(e), in that, Respondent has engaged in

professional or occupational misconduct as may be determined by the Board.

3. The above criminal action taken by the United States District Court, Southern District of New York, provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(f), in that, Respondent has engaged in acts constituting a crime or offense involving moral turpitude or relating adversely to the activity regulated by the Board.

4. The above disciplinary action by the sister State of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g), in that, Respondent's license to practice medicine has been suspended in another state.

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#### **DISCUSSION**

Based on the foregoing findings and conclusions, a Provisional Order of Discipline (the "POD") suspending Respondent's license to practice medicine and surgery in the State of New Jersey, until such time when Respondent can prove to the satisfaction of the Board that he has an active, unrestricted license to practice in the State of New York, was filed on or about February 20, 2007. A copy was forwarded to Respondent's last known address, on or about February 20, 2007, at 1694 Highland Avenue, Rochester, New York

14618 and 300 White Spruce Blvd., Rochester New York 14623 by regular mail and certified return receipt. The POD sent to the Highland Avenue address was returned by the Post Office as "unclaimed" and the one sent to the White Spruce address also was returned marked "not deliverable as addressed - unable to forward." The POD was subject to finalization by the Board at 5:00 PM on the 30<sup>th</sup> business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings of fact and conclusions of law should be modified or dismissed and by submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons thereof. No response has been received to date.

Accordingly, the Board considered the matter and determined that further proceedings were not necessary and that the POD should be made final.

ACCORDINGLY, IT IS on this 14th day of August, 2007,  
ORDERED THAT:

1. Respondent's license to practice medicine in the State of New Jersey shall be suspended until such time as his license to practice medicine in New York is fully reinstated with no restrictions, conditions or probation. Respondent shall be

precluded from applying for reinstatement for a minimum of three (3) years from the date of filing of this order.

2. Respondent shall appear before the board or a committee of the board prior to any reinstatement of licensure. Respondent shall demonstrate that he has complied with the terms of the within order and that he is fit to resume the practice of medicine in the State of New Jersey.

3. Prior to any appearance for reinstatement, Respondent shall provide the board with a current psychological evaluation by a psychologist approved by the board demonstrating that he is fit to resume the practice of medicine.

4. Prior to any appearance for reinstatement, Respondent shall complete an evaluation by the Professional Assistance Program of New Jersey ("PAPNJ") and demonstrate compliance with any substance abuse treatment, urine monitoring, and/or therapy recommended by the PAPNJ.

5. Prior to any appearance for reinstatement, Respondent shall attend and complete board pre-approved courses in the subject areas of ethics and controlled dangerous substances.

6. Prior to any appearance for reinstatement, Respondent shall provide proof of completion of the required CMEs for reinstatement.

7. The board shall reserve the right to place restrictions on Respondent's practice of medicine in New Jersey in the event his

license is reinstated. The restrictions may include, but are not limited to monitoring requirements.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By: Mario A. Criscito, M.D.  
Mario A. Criscito, M.D.  
Board President



**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

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**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but ~~is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners.~~ If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NAME:** Mark H. Fleischer, M.D.  
**NJ License #** MA039546

### **ADDENDUM**

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number<sup>1</sup>: \_\_\_\_\_

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

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List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

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Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

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<sup>1</sup> Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

~~In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.~~

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.